

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Crl.MC.No. 2074 of 2007()

CRMP.1445/2007 OF THE JFCM-I, PERINTALMANNA.
.....

PETITIONER: PETITIONER

V.JABIR, S/O.AHAMMED, VALAPPIL HOUSE,
PONMALA AMSOM, PO CHATTIPARAMBU, REPRESENTED BY
POWER OF ATTORNEY HOLDER, IVAN ACHUTHAN,
IVAN HOUSE, PONMALA DESOM, CATTIPARAMBA P.O.,
KODUR (VIA), TIRUR TALUK, MALAPPURAM DIST.

BY ADV. SRI.P.SAMSUDIN

RESPONDENTS: RESPONDENTS

1. THE DISTRICT COLLECTOR, MALAPPURAM.
2. THE REVENUE DIVISIONAL OFFICER,
PERINTALMANNA.
3. THE STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE KOLATHUR THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT
ERNAKULAM.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C. NO. 2074 OF 2007

Dated this the 28th day of June, 2007

ORDER

The petitioner is the Power-of-Attorney holder of the registered owner of a lorry. That vehicle was allegedly involved in the commission of an offence of illicit transportation of river sand contrary to the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act. The vehicle was seized. An application was filed before the learned Magistrate for release of the vehicle. The learned Magistrate, by the impugned order, rejected the application primarily on the ground that the vehicle was involved in several other identical offences. The petitioner claims to be aggrieved by that order. The learned counsel for the petitioner submits that the learned Magistrate ought to have directed to release of the vehicle to the petitioner subject

to appropriate conditions.

2. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor opposes the application. If this Court were inclined to direct the release of the vehicle to the petitioner, it may be on condition that he deposits maximum amount of fine in cash before the learned Magistrate. Appropriate security may be insisted for release of the vehicle and appropriate conditions may be imposed to ensure that the vehicle is not used for commission of any identical offence while it is released on bond to the petitioner, submits the learned Public Prosecutor.

3. I am not going into other controversies. I am satisfied that the vehicle can be released to the person entitled to possession thereof subject to appropriate terms and conditions. I must imbibe the spirit of the decision in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638). The Supreme Court has impressed upon the courts that need to ensure that valuable property is not subjected to damage and deterioration unnecessarily. I am satisfied that the vehicle can be entrusted to the person most entitled to possession thereof subject, of course, to appropriate and strict conditions.

4. In the result, this petition is allowed. The vehicle shall

be released to petitioner on the following terms and conditions:

(i) He shall produce the documents before the learned Magistrate to show that he is entitled to keep possession on behalf of the registered owner and that his principal is the real registered owner of the vehicle.

(ii) The petitioner shall execute a bond for an amount equal to the value of the vehicle to be determined by the learned Magistrate along with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) The petitioner shall deposit an amount of Rs.25,000/- in cash before the learned Magistrate.

(iv) In the bond to be executed by the petitioner, the petitioner shall specifically undertake that the vehicle shall not be used for commission of any offence while it is in his custody on the strength of the bond.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge